

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No. CV 2018-00680**

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO MAKE A CLAIM FOR  
JUDICIAL REVIEW PURSUANT TO PART 56.3 OF THE CIVIL PROCEEDINGS  
RULES, 1998 AS AMENDED AND PURSUANT TO SECTION 6 OF THE JUDICIAL  
REVIEW ACT, 2000**

**AND**

**IN THE MATTER OF THE CONSTITUTION & THE JUDICIAL REVIEW ACT, 2000**

**IN THE MATTER OF THE DECISION OF  
THE LAW ASSOCIATION OF TRINIDAD AND TOBAGO  
CONTAINED IN ITS LETTER DATED FEBRUARY 23, 2018  
TO CONTINUE TO TAKE FURTHER STEPS TO FURTHER AN ENQUIRY**

**AND**

**IN THE MATTER OF INVESTIGATION INTO THE HONOURABLE THE CHIEF  
JUSTICE OF TRINIDAD AND TOBAGO  
MR. JUSTICE IVOR ARCHIE O.R.T.T.**

**BETWEEN**

**THE HONOURABLE THE CHIEF JUSTICE OF TRINIDAD AND TOBAGO  
MR. JUSTICE IVOR ARCHIE O.R.T.T.**

**Applicant/Intended Claimant**

**And**

**THE LAW ASSOCIATION OF TRINIDAD AND TOBAGO**

**Intended Respondent**

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**JUDGMENT**

Before the Honourable Madam Justice Nadia Kangeloo  
Dated the 6<sup>th</sup> March, 2018

**Appearances:**

Mr. John Jeremie S.C. leading Mr. Ian Benjamin and Mr. Keith Scotland instructed by Ms. Raisa Caesar for the Applicant/Intended Claimant.

Mr. Christopher Hamel-Smith S.C. leading Mr. Jason Mootoo and Mr. Rishi Dass instructed by Mr. Robin Otway for the Intended Respondent.

**PROCEDURAL MATTERS**

1. The claim before this court is one for judicial review of a decision to continue on with an investigation and/or an enquiry to ascertain and/or substantiate allegations made against the Applicant (“the decision”). The Honourable, The Chief Justice of Trinidad and Tobago (“the Honourable Chief Justice”) is the Applicant in this matter; the Respondent is the Law Association of Trinidad and Tobago (“the Law Association”).
2. By Without Notice Application supported by his sworn Affidavit, on February 27, 2018, the Honourable Chief Justice approached this court for leave to apply for judicial review of the decision of the Law Association contained in the Law Association’s letter dated February 23, 2018 to continue to take further steps to further an enquiry and/or an investigation to ascertain and/or substantiate allegations made against the Honourable Chief Justice and/or refuse to take no further steps in that regard.
3. It should be noted that the allegations which are the subject of this matter and upon which the Law Association’s enquiry and/or investigation is fixed, have their genesis in numerous newspaper reports and articles published between November 2017 and January 2018.
4. A Certificate of Urgency was also filed and a first hearing of the Application was fixed for 5 p.m. on February 27, 2018, at which Senior Counsel for both parties appeared. After consensual discussions between the parties, the Law Association opted to abandon its initial challenge to the leave application on the ground of promptitude and instead agreed to treat with the matter in a “rolled up” hearing and consequent expeditious directions were

given for the filing and service of affidavits. All affidavits were filed in accordance with this Court's directions and oral submissions heard at the "rolled up" hearing on March 2, 2018.

5. The normal course of proceedings under Part 56 of the Civil Proceedings Rules 1998 as amended, in judicial review claims, would be to deal with the application for leave first and then the substantive issue. Notably, there is no expressed provision in either the Judicial Review Act Chap 7:08 or the Civil Proceeding Rules 1998 as amended which allow for "rolled up" hearings, however the courts have employed this method in circumstances where the courts deem it appropriate to do so. Justice Kokaram in the case of *Joanne Bailey-Clarke v The Ombudsman of Trinidad and Tobago and the Public Service Commission CV2016-01809* underscored the utility of a "rolled up" hearing in instances where "expedition is needed and the case needs to be managed to a rapid conclusion."

#### **THE GROUNDS UPON WHICH SUCH RELIEF IS SOUGHT**

6. For ease of reference, this Court sets out in full the grounds relied upon by the Honourable Chief Justice in seeking such relief at paragraphs 8 through 15 of his Without Notice Application.

[8] By section 2 of the **Constitution**, the **Constitution** is the supreme law of Trinidad and Tobago and any law that is inconsistent with the Constitution is void to the extent of the inconsistency.

[9] By virtue of **sections 99 to 100** of the **Constitution** the Applicant is the President of the Court of Appeal and ex-officio a Judge of the High Court, which two courts together constitute the Supreme Court.

[10] By virtue of **sections 104 and 110** of the **Constitution** the Applicant is the Chairman of the Judicial and Legal Service Commission which has responsibility, to make, among others, recommendations to the President of the Republic of Trinidad and Tobago all judicial appointments and to remove and exercise disciplinary control over appointees in Trinidad and Tobago.

- [11] As a Judge, the Applicant enjoys security of tenure and protection from investigation of the question of his removal from office, save in accordance with the procedures set out under the **Constitution**, undertaken by the persons and the bodies authorized under **section 137** of the **Constitution**.
- [12] Pursuant to **sections 35 to 45** of the **LPA** and the Schedules thereunder, disciplinary control over attorneys at law other than the Attorney General or Law Officers shall be exercised by a Disciplinary Committee appointed by the Chief Justice after consultation with the Council of the Law Association. Pursuant thereto allegations of professional misconduct are investigated by the Disciplinary Committee.
- [13] By virtue of the **LPA**, the LATT has no role in the appointment and/or the exercise of disciplinary control of Judges of the Supreme Court.
- [14] By the said decision, the LATT has acted and is acting outwith and/or in excess of its jurisdiction in that it has acted and is acting outwith the powers which are conferred on it by the **LPA** and contrary to the provisions of the **Constitution**.
- [15] Further, the said decision, has the appearance of bias, because the LATT has previously passed a Motion of No Confidence against the Applicant and the fair-minded and informed observer, having considered the facts, would conclude that there is a real possibility that the LATT's insistence on conducting an unauthorized and ultra vires enquiry and/or investigation to ascertain and/or substantiate allegations made against the Applicant is motivated by the LATT's bias against the Applicant. Further, the LATT's enquiry and/or investigation is being conducted in bad faith and/or in breach of the rules and/or requirements of natural justice, in that, in conducting the said enquiry and/or investigation the LATT has not provided, except upon demand from the Applicant's attorneys, copies to the Applicant of the material which the LATT and/or its Committee established to do so, has been and/or is considering and the LATT has not undertaken to provide to the Applicant a copy of its Committee's report which the LATT is threatening to submit and/or has unlawfully submitted to Dr. Francis Alexis Q.C. and Mr. Eamon Courtenay Q.C. for their respective advices for the purpose of convening a general meeting of

the Law Association for a decision to be made on the way forward and in failing to do so the LATT has breached and/or is breaching and/or has violated and/or is violating and/or has acted and/or is acting contrary to and/or has departed from and/or is departing from and/or has failed and/or is failing to comply with the rules and/or requirements of natural justice.

### **THE LEGISLATIVE BACKDROP**

7. This Court considers it critical to set out in detail, the relevant legislation upon which each party relies to support and defend this claim respectively.
  
8. For the Honourable Chief Justice sections 137(3) and 2 of the Constitution of Trinidad and Tobago is of paramount importance. Section 137(3) of the Constitution of Trinidad and Tobago provides the procedure for the removal of a judge from office. It states as follows:

“137. (3) Where the Prime Minister, in the case of the Chief Justice, or the Judicial and Legal Service Commission, in the case of a Judge other than the Chief Justice, represents to the President that the question of removing a Judge under this section ought to be investigated, then—

(a) the President shall appoint a tribunal which shall consist of a chairman and not less than two other members, selected by the President acting in accordance with the advice of the Prime Minister in the case of the Chief Justice or the Prime Minister after consultation with the Judicial and Legal Service Commission in the case of a Judge, from among persons who hold or have held office as a judge of a Court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a Court having jurisdiction in appeals from any such Court;

(b) the tribunal shall enquire into the matter and report on the facts thereof to the President and recommend to the President whether he should refer

the question of removal of that Judge from office to the Judicial Committee;  
and

(c) where the tribunal so recommends, the President shall refer the question accordingly.

It is also important to read Section 137(3) conjointly with the overarching section 2 of the Constitution in which it states that:

2. This Constitution is the supreme law of Trinidad and Tobago, and any other law that is inconsistent with this Constitution is void to the extent of the inconsistency.

The Respondent quotes the relevant section of the Legal Profession Act as follows:

Section 5 which states:

5. The purposes of the Association are—

(a) to maintain and improve the standards of conduct and proficiency of the legal profession in Trinidad and Tobago;

(b) to represent and protect the interests of the legal profession in Trinidad and Tobago;

(c) to protect and assist the public in Trinidad and Tobago in all matters relating to the law;

(d) to promote good relations within the profession, between the profession and persons concerned in the administration of justice in Trinidad and Tobago and between the profession and the public generally;

(e) to promote good relations between the profession and professional bodies of the legal profession in other countries and to participate in the activities of any international association of lawyers and to become a member thereof;

(f) to promote, maintain and support the administration of justice and the rule of law;

(g) to do such other things as are incidental or conducive to the achievement of the purposes set out at (a) to (f).

The Law Association in the instant case places, heavy, if not exclusive reliance on section 5(f) of the LPA as its statutory mandate for its enquiry and/or investigation into the allegations against the Honourable Chief Justice.

The LPA also provides by Rule 36(4) of the Third Schedule, the Code of Ethics, Part A that:

“36(1)(4) Where there is ground for complaint against a Judge or Magistrate an Attorney-at-law may make representation to the proper authorities and in such cases, the Attorney-at-law shall be protected.”

## **THE EVIDENCE**

9. This Court proposes to give no more than a colourless chronology of the evidence as contained in the affidavits filed before it with exhibits so as to put the parties' claims and submissions in the appropriate context. That is this Court's plain duty.
  
10. Three affidavits were filed in this matter; a primary and supplementary affidavit on behalf of the Honourable Chief Justice and a primary affidavit on behalf of the Law Association. From these affidavits, the following chronology can be extrapolated:
  - On November 30, 2017, one day after the Council of the Law Association appointed a Committee to ascertain/ substantiate the facts which formed the basis of the allegations made against the Chief Justice, the President of the Law Association, Mr. Douglas Mendes SC, together with Senior Ordinary member of the Council, Elton Prescott SC and Court Executive Administrator, Master Christie-Ann Morris-Alleyne met to discuss the allegations made against the Chief Justice, his failure to respond to the same and the decision to establish a Committee.

- On December 14, 2017 the Law Association issued a statement highlighting its concerns over the allegations of improper conducted levelled directly and by implication against the Honourable Chief Justice.
- On December 15, 2017 the Honourable Chief Justice responds via press release to the allegations made in the press about him.
- December 16- 31, over the ensuing two week period, a series of articles continued to appear in the press relating to the allegations against the Honourable Chief Justice.
- On January 3, 2018, it is reported in the press that the intention of the Law Association is to write to the Honourable Chief Justice to have him respond to the allegations. However, an interim report was nonetheless received from the investigating committee a week prior.
- On January 15, 2018, it is reported in the press that the Honourable Chief Justice is still being investigated by the Law Association.
- On January 20, 2018, the Honourable Chief Justice is informed in writing for the first time by the Law Association that a Committee has been established to attempt to ascertain/establish the basis of certain allegations that have been made against him. Via this letter the Chief Justice was also given an opportunity to provide any information in response to the allegations made against him. This letter contained no attachments.
- On January 30, 2018, the Honourable Chief Justice via his attorneys write to the Law Association informing the Law Association of its lack of jurisdiction and/or power to hold the Honourable Chief Justice or the Judiciary for that matter accountable for his actions or to make a determination on the veracity or falsity of any allegations made against him.
- On January 31, 2018, attorneys at law for the Honourable Chief Justice write to the Law Association requesting copies of any documents, photographs and



WhatsApp messages the Law Association may have in its possession in connection with the matter.

- On January 31, 2018, the Law Association responds via email from its President acknowledging receipt of the letter. It also indicated that the Committee was proceeding to finalise its report to be submitted to the selected Queens Counsel Dr. Francis Alexis and Mr. Eamon Courtenay for their advice.
- On February 6, 2018, the Law Association discloses documents it received in the course of its investigation.
- On February 14, 2018, by letter from his attorneys to the Law Association, the Honourable Chief Justice signals to the Law Association his opinion that the withholding of the substantive package of documents, statements and annexures in relation to this matter was plainly wrong, unfair and unacceptable to the Honourable Chief Justice.
- On February 15, 2018, the Law Association writes to the Honourable Chief Justice informing him of its intention to present the report being compiled along with any advices received to a Special General Meeting of the Law Association which is tentatively set for mid-March.
- On February 20, 2018, the Honourable Chief Justice's Senior Counsel was notified of the intention of the Law Association to send a brief to two Queen's Counsel for their advice. The email also invited a response of the Chief Justice which would have been sent to the two Queen's Counsel for their consideration.
- On February 21, 2018, the Honourable Chief Justice issues a pre action protocol letter in accordance with the Civil Proceedings Rules to the Law Association.
- On February 23, 2018, the attorneys at law for the Law Association responded to the pre action protocol letter of the Honourable Chief Justice informing him that it had a responsibility to examine the allegations made concerning the

conduct of the Chief Justice and that based upon the results of such examination the Law Association intends to take such steps as may be appropriate.

- On February 26, 2018, the Law Association via a Notice advised its membership of a Special General Meeting which is set to take place on March 15, 2018 where the report of the Committee of the Council and the advice of the two Queen's Counsel will be considered along with the course of action to be taken.
- On February 27, 2018, the Honourable Chief Justice files a Without Notice Application for leave to make a claim for judicial review.

The Court includes two other matters in the public domain, judicial notice of which it says it is entitled to take as follows:

- The report in the Trinidad Guardian newspaper of November 27, 2017 which reports Attorney General Faris Al-Rawi as saying that the executive is still not getting involved in the latest issue involving Chief Justice Ivor Archie, although it prompted High Court Judges to write to the Chief Justice seeking a meeting to discuss allegations against him. The report goes on to quote the Attorney General as saying "There are clear constitutional guidelines on the involvement between the executive and the Judiciary under Section 137 of the Constitution which deals with judges" and that there is "nothing at this point in time which should occupy the executive's attention in this matter."
- The Prime Minister himself, in a nationally televised interview on December 6, 2017 said:

"The Office of the Prime Minister is constrained by law, by the Constitution, as to what its responsibility is. When we created this nation, we laid down certain provisions to prevent certain things from happening. ... The Office of the Prime Minister cannot "willy nilly" decide that I am unhappy with the Chief Justice today or unhappy with the Judiciary today

so I jump in and fix it... The Constitution spells out specifically how you can get rid of a Chief Justice.”

It is against this backdrop of evidence that the Court goes on to consider instant claim and the Submissions made in relation thereto.

## **THE CLAIM AND THE SUBMISSIONS**

11. Essentially, the Honourable Chief Justice argues that the Law Association has acted outwith its authority in continuing the aforementioned enquiry and/or investigation. He argues that no interpretation of Section 5 of the Legal Profession Act Chapter 90:03 (“LPA”), in particular Section 5(f) thereof permits the Law Association to investigate a Judge or the Chief Justice. To interpret this Section otherwise would permit the Law Association to overstep the boundaries of its stated objects. The Honourable Chief Justice further contends that the investigation of a Judge or the Chief Justice remains within the sole purview of the Constitution, in particular Section 137 thereof, and that the Constitution is the supreme law of the land, according to Section 2 thereof.
12. The Constitution also provides, *inter alia*, for the appointment and the removal of Judges and the Chief Justice. In the instance of the Chief Justice, the Prime Minister is the person responsible for triggering the process which may lead to an investigation into any misbehaviour of the Chief Justice.
13. Indeed, the Honourable Chief Justice submits that Section 137 of the Constitution provides the exclusive procedure and a special code for the removal from office of a judge or the Chief Justice (see *Rees v. Crane [1994] 2 A.C. 175 (P.C.)*).
14. The Honourable Chief Justice further submits that the decision of the Law Association to continue its enquiry and/or investigation has the appearance of bias because of the Motion of No Confidence passed by the Law Association against him as well as its continued investigation. The Honourable Chief Justice submits that the fair minded

and informed observer, having considered the facts, would conclude that there was a real possibility that the Law Association's insistence on conducting an unauthorized and *ultra vires* inquiry and/or investigation to ascertain and/or substantiate allegations made against the Honourable Chief Justice is motivated by the Law Association's bias against the Honourable Chief Justice.

15. The Honourable Chief Justice also maintains that the Law Association acted unfairly towards him and breached the rules of natural justice. In particularizing this claim, the Honourable Chief Justice states that in the conduct of its investigation, the Law Association, except upon demand, was not forthcoming in providing him with the materials that the Law Association and/or its Committee established, has been considering. The report of the Committee and other documentary evidence was not initially supplied to the Honourable Chief Justice which is contrary to and a departure from the requirements of natural justice.
16. In fact, in submissions before this Court, Senior Counsel for the Law Association indicated that the Law Association had not yet decided whether or not it would supply the Honourable Chief Justice with its Committee's report, it may or it may not. It was described as "a brief to Counsel", undoubtedly a reference to Dr. Francis Alexis Q.C. and Eamon Courtenay Q.C., the Law Association's legal advisors retained for the purpose of obtaining their advice on the way forward prior to convening any general meeting of the Law Association. To date, the Honourable Chief Justice has also not been supplied with the advice of these two senior Attorneys and may or may not be.
17. By Notice dated February 26, 2018, a special general meeting of the Law Association has been called and is carded for Thursday March 15, 2018 at 3 p.m. at Queen's Hall. According to the Notice the objects of the meeting are:
  - (i) To consider the report of the Committee of the Council appointed to ascertain/substantiate the allegations against the Honourable Chief Justice;
  - (ii) To consider the advice of Dr. Francis Alexis QC and Mr. Eamon Courtenay QC;
  - and
  - (iii) To direct the Council as to the course of action to be taken, if any.

18. The Honourable Chief Justice submits that the actions of the Law Association are unauthorized, have no statutory mandate, are unconstitutional, tainted by bias and are in effect a “shadow investigation” of what it contemplated and exclusively provided for by Section 137 of the Law Association.
19. He therefore seeks to restrain any further investigation by the Law Association.
20. The Law Association holds firmly to the view that Section 5 of the LPA gives it the statutory mandate to conduct the said inquiry and/or investigation. Senior Counsel for the LPA admits in his submissions that such inquiry and/or investigation has not been perfect but that they “have done the best that they can.”
21. The Law Association relies on the *Meerabux v The Attorney General of Belize [2005]UKPC 12* and *Chief Justice of Gibraltar [2010] 2 LRC 450* cases to say that a Bar/Law Association or a group of Attorneys, a single Attorney, indeed any citizen of this country may complain about a judge or the Chief Justice. This Court agrees with such contention. What is absent from these cases as well as from *Rees* is any reference to an enquiry and/or investigation conducted by any such entity prior to the bringing of such complaint. No authority was presented to this Court which demonstrated the Law Association had the entitlement and obligation to conduct an enquiry and/or investigation into a judge or Chief Justice with the potential aim of having such judge or Chief Justice removed from office. The Law Association itself recognizes that it cannot discipline the Chief Justice nor compel him to respond to their correspondence.
22. The Law Association also strongly disputes that it has been in any way biased in its conduct of the enquiry and/or investigation and, like the Honourable Chief Justice, points this Court to the well-known authorities of *In re Medicaments and related classes of goods [2001] (No 2) 1 WLR 700*, *Porter v. Magill [2002] 2 AC 357* and *Helow v Secretary of State for the Home Department [2008] UKHL 62* for exposition of the oft quoted test – whether the fair-minded and informed observer, having considered the facts, would consider that there was a real possibility of bias.

## THE LAW AND THE COURT'S FINDINGS

23. This Court considers it important to appreciate the historical underpinnings of Section 137 of Constitution and so refers to the Report of the Constitution Commission dated January 22, 1974, which had this to say on the removal of judges at paragraph 342, pages 147-148:

### *“Removal of Judges*

*342. We recommend the retention of the present provisions dealing with the disciplining of judges and their removal for misconduct but with one significant change. We recommend that the report of the tribunal which has investigated charges against a judge should no longer be sent to the Privy Council for consideration but should be sent to the President who shall act on its recommendations. When it is, borne in mind that the tribunal investigating the charges will be made up of three persons all of whom are holding or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some Commonwealth country or a court having jurisdiction in appeals from any such court, there would seem to be no need for a further review of the matter by another tribunal outside the country. (emphasis this Court's)”*

Indeed, this statement appears to underscore the need for a sole review into the removal of judges and that review being provided for in the Constitution.

24. As further invaluable interpretative background to the import of Section 137 of the Constitution, it is noteworthy to note the comments of Sir Ellis Clarke repeated for our benefit in Dr. Hamid Ghany's text, *Changing Our Constitution - A Comparison of the Existing Constitution of Trinidad And Tobago and the Working Document on Constitutional Reform for Public Consultation* (2009), where at pages 10 to 12 the author had this to say:

*“At the Queen's Hall Conference in April 1962, the meeting of commentators on the draft Constitution had a three-day discussion on the*

*draft that was prepared in February 1962 by the then Constitutional Adviser to the Cabinet, Ellis Clarke. When the Queen's Hall Conference got around to discussing the provisions on the Judiciary on Friday 27th April, 1962, a number of interesting comments were made by the Constitutional Adviser to the Cabinet.*

*According to Ellis Clarke:*

*“Let me deal, if I may, Mr. Chairman, now with the question of tenure of office of Judges. This is a matter of great importance because obviously any man who goes into a field such as the Judiciary is primarily concerned with his tenure of office; how long he is going to be there and under what circumstances. First of all let me say that there is no such thing under this Constitution as disciplinary proceedings against a Judge. There are disciplinary proceedings against Civil Servants and against other people but there are no disciplinary proceedings against a Judge. If a Judge is so bad that he should not continue as a Judge then you must get rid of him but a Judge must not be under any threat of being disciplined.”*

*What Ellis Clarke was doing was making out a case for the independence Constitution to recognize judges in a separate category from all other persons.*

*He went further to say:*

*“The Judicial Committee of the Privy Council will have the final say, and in fact the only say on the dismissal of a Judge. That is not a matter in which the Prime Minister will have any say. The dismissal of a Judge, all that the Prime Minister may do is to say that he thinks that a Judge, through infirmity of mind or body, or misbehaviour, ought to be removed.”*

*Here, Ellis Clarke was indicating to the Conference that the role of the Prime Minister was confined to reporting his belief that there was a basis for*

*considering the removal of a Judge from office on the ground of infirmity of mind or body or misbehaviour.*

*He went further to say the following:*

*“We have inserted a further safeguard; that is to say instead of saying if the Prime Minister thinks so and so, he can refer the matter to the Privy Council, in much the same way, mind you that if anybody thinks that a Judge has done anything wrong he can bring proceedings against that Judge or against anybody, including the Prime Minister. All that the Prime Minister can do is initiate something, say that it ought to be taken up, but instead of saying that, it goes straight to the Privy Council because the Prime Minister says so. There is interposed a Committee of Judges, a Tribunal consisting of three Judges or ex-Judges, and these good gentlemen have to say whether in their view it should go to the Privy Council at all.”*

*A separation was being made here between the removal of a judge from office and the initiation of proceedings against a judge (or any other official) for any alleged wrongdoing.*

*As far as Executive - Judiciary relations are concerned in the context of the power of the Prime Minister to pursue the removal of a Chief Justice, Ellis Clarke had this to say:*

*“What then are the political consequences for the Prime Minister. Will any Prime Minister, be he sane or be he rash, attempt lightly to initiate such proceedings? Suppose they say there is a case to go to the Privy Council, then the case goes to the Privy Council and is heard by the Privy Council, and the Privy Council can say, and can say in clear and unmistakable terms that there was not a vestige of a case to come to them. They can criticise very strongly indeed the conduct either of the Prime Minister in initiating proceedings or the three judges if they think they are*



*going to be weak and send the matter to the Privy Council that ought never to reach there. So do not think that because the expression “Prime Minister” occurs here and there in this chapter that the power is vested in the Prime Minister. The power of dismissal is vested solely in the Judicial Committee of the Privy Council and before it can ever get to the Judicial Committee of the Privy Council, three Judges have to be of the opinion that it ought to go to them for consideration.”*

25. The Honourable Chief Justice relies on the *locus classicus* of *Rees v. Crane* to support his contention that the Constitution contains detailed and powerful safeguards for security of tenure and independence of the judiciary.
26. The *Rees* case goes on to give an excellent exposition of the tripartite process contemplated by Section 137 of the Constitution and to clarify that “*if judicial independence means anything, a judge cannot be suspended nor can his appointment be terminated by others or in other ways.* (emphasis this Court’s)” (see *Rees at pages 188 to 189 H to A*). Lord Slynn here echoes the sentiments of Sir Ellis.
27. The Law Association in conducting its enquiry and/or investigation has revealed as early as December 18, 2017 in its Press Release to its members that its potential endgame, upon the advice of two Senior Counsel would be to consider this advice on whether there is sufficient basis to refer a question of misbehaviour by the Chief Justice to the Prime Minister for his consideration pursuant to Section 137 of the Constitution.
28. Let us not forget that by time, there had continued a slew of newspapers articles containing allegations against the Chief Justice and that the Prime Minister had openly stated on December 6, 2017 that he would not get involved.
29. This Court is therefore entitled to ask itself, what was the intention of the Law Association in expending the time and effort and perhaps costs in appointing a Committee, of which the President of the Law Association was President,

investigating these allegations, by providing information to the press by way of updates on the Committee's work and in answer to specific questions put to the President of the Law Association and the Committee by the newspapers? This Court is reminded of the words of Archie J.A. in the *Panday v. Virgil Mag. App. No. 75 of 2006* case at page 7 where it was stated:

*“It is not unknown for letters, articles or reports in the media to be biased, inaccurate or written with an undisclosed agenda. Such reliance [by Counsel] is even more dangerous in circumstances where there is no cross-examination as it risks placing undue or equal weight to hearsay material (even where the source is disclosed).”*

30. The Court also asks itself, as was an issue in the *Meerabux* case, what was the necessity for the President of the Law Association to also be the President or indeed even a member of the Committee to ascertain/substantiate the allegations against the Honourable Chief Justice?
31. This Court find that the Law Association indeed by its conduct of its investigation by the appointment of the Committee with the President of the Law Association being the President of that Committee, in the role of the President of that Committee in liaising with the Press and in corresponding with the HDC and in all other matters including the issue of press releases, sought to shadow the procedure which is set out under Section 137 of the Constitution. And this Court finds that the Law Association has indeed done so and continues so to do. The final opportunity for its members to participate in this mirror of the Section 137 procedure will be given at the meeting to be held on March 15<sup>th</sup> 2018 to determine whether the Committee's report and the advice of Senior Counsel ought to be sent to the Prime Minister for him to consider instituting Section 137 proceedings.
32. The Court therefore finds that the Law Association is attempting by its enquiry and/or investigation which may be potentially sent to the Prime Minister is being conducted with a view to change the Prime Minister's mind. The Prime Minister has already made his position clear.

33. The *Meerabux* case is largely a case on bias but has been relied upon by the Law Association to demonstrate that there was found to be no issue with the complaint of the Bar Council to the Governor General concerning the Chief Justice, nor to the affidavits provided. What is clearly absent from the judgment is however any reference to any investigation conducted by the Belize Bar Association prior to the delivery of the complaint and subsequent to the Executive indicating that it would not get involved in the matter. Further, in the *Meerabux* case, it was clear that any role for the Bar Association was envisioned to take place at the tribunal stage, when witnesses were called and cross-examined and the Chief Justice fully participated.
34. The Court was also referred by Senior Counsel for the Law Association to the case involving *Re The Chief Justice of Gibraltar [2010] 2 LRC 450*. This was a case where all of the island's Queen's Counsel, save for the Speaker of the House and 27 law firms were signatories to a memorandum to the Governor which expressed deep concern at the state of affairs which had developed seriously affecting the administration of justice and the reputational image of Gibraltar. This Court finds that even in that instance, the Constitution Order 2006 mandated a special procedure, which was adopted, which included multiple directions hearings, terms of reference, a list of issues, opening statements and witness statements, all geared to ensuring procedural fairness.
35. In the instant case, this Court finds, as a matter of law that the removal of judges and the Chief Justice is enshrined, dictated and provided for solely under the Constitution for this very reason, to ensure procedural fairness to judges and the Chief Justice who enjoy security of tenure thereunder.
36. This Court finds no complaint with the power the Law Association as mandated under Rule 36(1)(4) of the Code of Ethics Part A, that the Law Association, like any other citizen of this country, may make a complaint about a Judge or the Chief Justice. What this Court says cannot be permitted on a conjoint reading of Section 5(f) and Rule 36(1)(4) or even these parts of the LPA separately does not empower in any way or authorize the Law Association to conduct an investigation into

misbehavior of the Chief Justice in any terms. The sole procedure for so doing is to be found in the Constitution.

37. On the issue of bias, if this Court puts itself in the shoes of the fair-minded and informed observer, and looks at all the Affidavits files herein, it notes that the Motion of No Confidence in relation to the appointment of Marcia Ayers-Caesar took place in May last year and resolutions that were passed in relation to the Chief Justice and to other members of the Judicial and Legal Service Commission (“JLSC”) calling upon them to be removed as such in respect of their particular positions within the JLSC. The Court can find no apparent bias in the instant case on the part of the Law Association which would stem from those resolutions nor from the conduct of the Law Association as a body to date. The Court therefore finds that the ordinary fair-minded observer being informed of all of the facts and sitting in Woodford Square, Harris Promenade or in Shaw Park would not consider that in all of the circumstances of this case the body or the entity which is the Law Association of Trinidad and Tobago can be found wanting in terms of bias and is therefore not guilty of apparent bias on this issue and the Court so finds in that regard.

### **THE COURT’S ORDER**

38. Accordingly, this Court finds that in all of the circumstances of this case, the Law Association of Trinidad and Tobago has acted outwith its authority under the LPA in commencing and continuing its enquiry and/investigation into the allegations against the Honourable Chief Justice.
39. This Court therefore grants a declaration that the said decision is illegal and/or *ultra vires* and/or unreasonable and/or irrational and/or contrary to the provisions of the Legal Profession Act and is null and void and of no effect.
40. This Court grants an order of certiorari to remove into this Honourable Court and quash the said decision on the issue of bias which was also hotly contested between

the parties in this matter. The court has reviewed all of the circumstances of this case.

41. Decision on Costs reserved to Friday March 9<sup>th</sup>, 2018 at 9:00 a.m. in Courtroom POS-25, at the Hall of Justice, Knox Street, Port of Spain.

**Nadia Kangaloo**  
**Judge**  
**March 6<sup>th</sup>, 2018**